

## HAMPTON PLANNING BOARD – MINUTES

May 19, 2004

**PRESENT:** Robert Viviano, Chairman  
Ken Sakurai, Clerk  
Tom Gillick  
Tom Higgins  
Keith Lessard  
Jim Workman, Selectman Member  
Fran McMahon, Alternate  
Bill Bilodeau, Alternate  
Jennifer Kimball, Town Planner

**ABSENT:** Tracy Emerick, Vice Chairman

Mr. Viviano called the meeting to order at 7:00 p.m. by introducing the Board members. Mr. Viviano then asked Mr. Higgins to lead the Pledge of Allegiance.

### **I. CONTINUED PUBLIC HEARINGS:**

1. Jean Boudreau  
Site Plan Review to demolish existing structures and  
construct four (4) Residential Condominium units with parking at  
35 Ashworth Avenue  
Map 282, Lot 206  
Owner of Record: Janet Reynolds  
*Jurisdiction accepted April 7, 2004*

Attorney Peter Saari of Casassa & Ryan introduced himself as representing the applicant. Also introduced was Ms. Jean Boudreau, Mr. Ernie Cote, Surveyor, and Mr. Steve Gleason, Architect. Attorney Saari gave a brief overview of the revision of the plan, being the location of the pillars. Mr. Cote distributed a handout drawing of the parking turns that were a previous concern of the Board. There was Board discussion regarding the footage from the pillar to the encroachment and the pillar to the edge of the pavement. Mrs. Kimball stated the 22' parking clearance regulations are understood as from the rear of the parking to the obstruction. Although the Board agreed the revised plans were of marked improvement from the previous submittal, there was a consensus that a waiver would be required regarding the parking clearance regulation.

**OPEN PUBLIC HEARING: NO COMMENT.**  
**SUSPEND PUBLIC HEARING.**

Mr. Viviano asked for additional Board comments. Hearing none, Mr. Lessard **MOTIONED** to continue the Jean Boudreau Site Plan Application to the June 16, 2004 Planning Board with a requirement that a waiver request be submitted in reference to the detailed discussion of the 22ft. parking clearance regulation, as well as, to include an updated architectural drawing. The applicant was informed that notification regulations require, along with submittal of a waiver request, an updated abutter's list, and appropriate fees no later than May 28, 2004 (deadline) for the June 16, 2004 meeting. Additionally, the Board understands the applicant has agreed to extend the jurisdictional period as necessary. Mr. Sakurai **SECONDED. VOTE: AII. MOTION PASSES UNANIMOUSLY IN THE AFFIRMATIVE.**

2. Robert O'Keefe  
2 Lot Subdivision of property at  
16 O Street & 23 N Street  
Map 293, Lot 130  
Owner of Record: Same as above  
*Jurisdiction accepted April 7, 2004*

Attorney Peter Saari of Casassa & Ryan introduced himself as representing the applicant. Also introduced was Mr. Robert O'Keefe, and Mr. Ernie Cote, Surveyor. Attorney Saari gave a brief overview of the revision of the plan noting the parking area was reconfigured and the existing steps will be moved to the East Side of the building. Mrs. Kimball referred to the comments on the Department of Public Works memo dated May 5, 2004 and Town Attorney Gearreald's memo dated May 17, 2004 regarding the fact that a portion of the structure hangs over the property line, on part of the Town Right of Way. There was Board discussion regarding how to come to a resolution with the disparity of the property line issue and consensus was the Board recommends further review by the Town Attorney and comment from the Hampton Beach Commission on Zoning & (re)Development Subcommittee for consistency with the Beach Master Plan before taking any further action on this application.

**OPEN PUBLIC HEARING: NO COMMENT.**  
**SUSPEND PUBLIC HEARING.**

Mr. Viviano asked for additional Board comments. Hearing none, Mr. Lessard **MOTIONED** to continue the Robert O'Keefe 2-Lot Subdivision Application to the July 7, 2004 Planning Board meeting subject to:

- 1) Review and comment by the Hampton Beach Commission Zoning & (re)Development Subcommittee, and,
- 2) Further discussion between the Town Attorney, Mrs. Kimball, Attorney Saari, and Mr. Cote, to resolve the disparity of the Lot Line issues discussed.

Mr. Gillick **SECONDED. VOTE: AIL. MOTION PASSES UNANIMOUSLY IN THE AFFIRMATIVE.**

3. Ocean Vista, LLC  
Site Plan Review for 5 Unit Condominium with onsite parking at  
6 Hemlock Street  
Map 209, Lot 49-1  
Owner of Record: Woodland Estates of Hampton, LLC
4. Ocean Vista, LLC  
Special Permit to work within the Wetlands Conservation District to grade and install gas service associated with 5 Unit Condominium at  
6 Hemlock Street  
Map 209, Lot 49-1  
Owner of Record: Woodland Estates of Hampton, LLC

Attorney Peter Saari of Casassa & Ryan introduced himself as representing the applicant. Also introduced was Mr. Joe Coronati of Jones & Beach Engineers. Mrs. Kimball reviewed Mr. Coronatis' memo dated May 12, 2004, and the Conservation Commission memo dated April 28, 2004. There was Board discussion regarding the State Standards and Regulations in reference to the previous property owner action on clearing and soil fill of the proposed area.

Mr. Coronati stated the applicant has contacted the proper agencies and expects a response from those agencies, including the Department of Environmental Services. Mrs. Kimball stated that the revised plans constitute a complete set. She noted the applicant made several changes, including the addition of a natural trail and a vegetated buffer.

**OPEN PUBLIC HEARING: NO COMMENT.  
SUSPEND PUBLIC HEARING.**

Mr. Viviano asked for additional Board comments. There was lengthy Board discussion regarding the fill and soils on site. The Board is concerned about what materials may be in the fill. Mr. Coronati suggested soil testing by a professional. Mr. Sakurai **MOTIONED** to accept jurisdiction of and continue the Ocean Vista Site Plan and Special Permit Applications to the July 7, 2004 Planning Board meeting subject to:

- 1) Review and comment by the Conservation Commission, Police Department, Fire Department, Department of Public Works, and Highway Safety,
- 2) Independent review and comment by Ambit Engineering, and Aquarion Water, and,
- 3) Submittal of review and comment of the on site fill & soils by a Professional Soil Scientist.

Mr. Gillick **SECONDED. VOTE: 5 = YES / 1 = OPPOSED** (Mr. McMahon). **MOTION PASSES IN THE AFFIRMATIVE.**

5. Drakes Appleton Corporation  
Site Plan Review to construct 36 unit Townhouse condominiums at  
180 Drakeside Road (rear)  
Map 172, Lot 12-1  
Waiver Requested: Site Plan Regulations Section VII.D.2 (increase in storm water runoff)  
Owner of Record: Morgan Ryan Realty Trust  
*Jurisdiction accepted March 3, 2004, extended by applicant*
6. Drakes Appleton Corporation  
Special Permit to work within the Wetlands District, associated with 36 unit Townhouse at  
180 Drakeside Road (rear)  
Map 172, Lot 12-1  
Owner of Record: Morgan Ryan Realty Trust

Mr. Lessard and Mr. Workman step down for this application.  
Mr. Bilodeau takes a seat on the Board.

Attorney Michael Donahue of Donahue, Tucker, & Ciandella introduced himself as representing the applicant. Mr. Tom Nigrelli, Developer, and Mr. Joe Coronati of Jones & Beach Engineers were also introduced. Mrs. Kimball commented that based on the Conservation Commission comments, the developer is considering revising the plans in reference to this application and the applicant will now exercise the rights, per Rules & Regulations 676:4 II a to propose a conceptual plan to develop this property. This would be for discussion purposes only and does not require a Public Hearing. Mr. Gillick **MOTIONED** to postpone the Drakes Appleton Corporation Site Plan, Special Permit Applications, and Public Hearing until after the Preliminary Consultation. Mr. Sakurai **SECONDED. VOTE: All. MOTION PASSES UNANIMOUSLY IN THE AFFIRMATIVE.**

#### IV. ATTENDING TO BE HEARD:

1. Drakes Appleton Corporation  
Preliminary Consultation to discuss a multifamily proposal at  
180 Drakeside Road (rear)  
Map 172, Lot 12-1  
Owner of Record: Morgan Ryan Realty Trust

Attorney Michael Donahue of Donahue, Tucker, & Ciandella introduced himself as representing the applicant. Mr. Tom Nigrelli, Developer, and Mr. Joe Coronati of Jones & Beach Engineers were also introduced. Attorney Donahue proceeded to explain the background reasons of the conceptual plan being proposed. Mr. Nigrelli outlined the differences between the previously proposed application and this conceptual plan. The highlights were: the original plan has less wetland impact, but more impact on the sensitive uplands to the rear of the site, and the conceptual plan has more, overall wetland impact and may require variances from the Zoning Board. The conceptual plan would include *filling* of approximately one acre *of Wetland Conservation District* along Drakeside Road, with “flat-style” apartments. The number of units would increase over the existing, *36-unit* proposal.

Mrs. Ellen Goethel, Conservation Commission Chair was introduced. Mrs. Goethel stated the Conservation Commission is requesting an opportunity to write their recommendations on the original proposal, should that proposal continue being considered by the Planning Board. The Conservation Commission consensus on the conceptual plan was that it is a considerable disturbance to the wetlands but it is more favorable than the original proposal, as well as the density of the concept was on the extreme. Mrs. Goethel continued to state, of some 25 acres of property there were approximately 3 buildable acres and the water quality will be affected immensely. The Conservation Commission consensus also stated neither proposal leaves the property in a better state than exists.

Attorney Donahue then introduced a Wetland Consultant, Mr. Mark West. Mr. West proceeded to explain the conceptual plan has a protection of upland exceeding requirements of the State Department of Environmental Services that what will be required. Mr. West read an email from Mr. Frank Richardson of the Department of Environmental Services (also cc: Peter Tilton).

There was Board discussion regarding the Rules & Regulations behind the RSA 676:4 b of the design review phase of a conceptual plan. Mr. Viviano asked for Board recommendation to the applicant regarding the conceptual. The Board consensus was the conceptual plan was favored because of the minimized impacts to the upland island. Attorney Donahue stated should the applicant continue to pursue the conceptual plan they would bring it before the Zoning Board of Adjustment in June of 2004 for the variance issues.

Mr. Viviano thanked the applicant for their presentation of the Drakes Appleton conceptual plan. and reiterated the Hampton Planning Boards’ consensus was for the applicant to pursue the concept of building adjacent to Drakeside Road, and the applicant’s interest in protection of the valuable upland adjacent to the salt marsh. However, Mr. Viviano stated, the Board is concerned about the density and impact of the proposal and encouraged the applicant to consider means to reduce the impacts.

Mr. Gillick **MOTIONED** to suspend the Drakes Appleton Corporation Site Plan, Special Permit Applications, and Public Hearing to the July 21, 2004 Planning Board meeting subject to:

- 1) Review and comment from Conservation Commission (and other departments), should you choose for this proposal to continue.

The applicant was advised to contact Mrs. Kimball at the Planning Office if review of these applications were to resume. Additionally, it is the Board's understanding that the applicant agreed to extend the jurisdictional period as necessary. Mr. Sakurai **SECONDED. VOTE: 4 = YES / 1 = OPPOSED** (Mr. Higgins). **MOTION PASSES IN THE AFFIRMATIVE.**

Mr. Bilodeau steps down at this time.

Mr. Lessard and Mr. Workman return to the Board.

#### **IV. ATTENDING TO BE HEARD:**

2. Julie Lewis  
Use Change Application to convert office/retail space (as approved by the Planning Board)  
to a Wellness Center & Spa  
570 Lafayette Road  
Map 126, Lot 49  
Owner of Record: Saxonville Wholesale Lumber
3. 1<sup>st</sup> & Ten Property Corporation  
Parking Lot Permit Application at  
373 & 375 Ocean Boulevard  
Map 275, Lots 8 & 25  
Waivers Requested: Site Plan Regulations Sections VI.E.8 (storm water calculations) &  
VIII.B.1 (parking lot design, pavement)  
Owner of Record: Same as Above
4. John Privitera  
Use Change to convert Motel office to Hair Salon and 4 Motel rooms to a Restaurant at  
86 Ashworth Avenue  
Map 287, Lot 043  
Owner of Record: Same as Above

Mr. Viviano stated due to time constraints, these applications would have to be moved to the next meeting and apologized for any inconvenience. Mr. Gillick **MOTIONED** to postpone the Julie Lewis, 1<sup>st</sup> & Ten Property Corporation, and John Privitera Use Change Applications to the June 2, 2004 Planning Board meeting because of time constraints. Mr. Higgins **SECONDED. VOTE:**  
**All. MOTION PASSES UNANIMOUSLY IN THE AFFIRMATIVE.**

#### **II. NEW PUBLIC HEARINGS:**

1. Vertical Building & Development Company, LLC  
Amended Site Plan Review of project known as the "Majestic" (currently under Old Business)  
for 42 Unit Condominium with 2 retail stores at  
Ocean Boulevard, J & K Streets  
Map 293, Lot 008; Map 290, Lots 144, 145, & 146  
Owners of Record: Nancy J. Higgins Revocable Trust; Five Jay Street, LLC;  
Jerelyn A. Gray & Peter B. Dineen; Captain Morgan Inn, Inc.

#### **III. OLD BUSINESS:**

1. Vertical Building & Development Company, LLC  
Site Plan Review for 42 Unit Condominium with 2 retail stores at  
Ocean Boulevard, J & K Streets  
Map 293, Lot 008; Map 290, Lots 144, 145, & 146  
Owners of Record: Nancy J. Higgins Revocable Trust; Five Jay Street, LLC;  
Jerelyn A. Gray & Peter B. Dineen; Captain Morgan Inn, Inc.

Mrs. Kimball noted the Vertical Building & Development Company, LLC Site Plan Application currently under OLD BUSINESS has been withdrawn by the applicant. No further action needs to be taken by the Board regarding this application.

Attorney Peter Saari of Casassa & Ryan introduced himself as representing the applicant. Also introduced were Mr. Joe Coronati of Jones & Beach Engineers, and Mr. Stephen Yas, Architect. Mr. Viviano stated the Board will open this hearing up to the public, at which time it is expected the abutters will focus comments regarding only to the changes between the original submittal and the new proposal being heard this evening.

Mr. Michael Scanlon of 4 J Street stated concerns for a conflict of interest between the Board's Selectman Representative and the Town of Hampton because of the Town owning/leasing a minor section of the proposed property at 5 J Street. There was Board discussion regarding the Rules & Regulations behind this concern. The Board did not find any conflict of interest, however, Mrs. Kimball stated she would consult with the Town Attorney to clarify how to handle this in the future.

Mr. Workman steps down at this time.

Mr. Yas proceeded to state the changes to the plan having been the height from 69' is now at 63'9". These figures are to the peak corners of the parapet. Mr. Yas continued to discuss the changes to the two-way traffic lane in the parking garage, and the revised plan now shows an evening exit prohibited to eliminate the noise and lights that were a previous concern. Mrs. Kimball asked for clarification on the exit restriction as this has not proven to be a beneficial method on other projects in the past. She noted the plans state the entrance on J Street is one-way "in". Mrs. Kimball also read from her May 19, 2004 memorandum. Mr. Yas agreed to further evaluate the possibilities in modifying this concern.

#### **OPEN PUBLIC HEARING:**

Mrs. Kimball noted a letter had been received from Ms. Jeanne Lilienthal of 7 J Street dated May 14, 2004 and is now part of the record.

Mrs. Geannina Guzman-Scanlon of 4 J Street introduced herself. Mrs. Guzman-Scanlon stated concerns for incorporating all past concerns and letters from the Withdrawn Application. She asked for clarification regarding the parapet and the roof heights because of the recent Zoning Variances granted for this project. Mrs. Guzman-Scanlon was concerned that inappropriate abutter notification may have been erred with this application. Additionally, she was concerned of the balconies at the West elevation now being added in to the plan, where they were not showing previous. Mrs. Guzman-Scanlon stated she will be sending in a memo of additional concerns and would like the Boards' consideration to take the time to read, and absorb, the information she will be covering.

Mr. Viviano stated all known records regarding the Vertical Building & Development Company, LLC, also known as "The Majestic", are now incorporated into the record of the new application being heard. Mr. Gillick **MOTIONED** that all known records regarding the Vertical Building & Development Company, LLC, also known as "The Majestic", be incorporated into the records of the new application being heard. Mr. Lessard **SECONDED. VOTE: AII. MOTION PASSES UNANIMOUSLY IN THE AFFIRMATIVE.**

Mrs. Kimball stated all the abutter notification was given by the application, that information is located in the file at the Planning Office and is available for review. There was Board discussion regarding the parapet height versus the actual roof height.

Mrs. Kimball concurred with Mr. Yas and clarified the roof is now at 54' 8" (from 59') and the parapet would 'wrap around' the flat roof and act as a cosmetic attraction hiding any mechanical units, etc... Mr. Gillick stated that the plans being viewed did not represent what we were discussing and expressed concern of the confusion on the discussion. Mr. Yas clarified that with the recent Zoning Variances granted, the plans reflect exactly what was granted: roof height of 54' 8", highest, peak height at parapet is 63' 5", and 4' set backs. Mr. Higgins asked to clarify the balcony issues now showing on the plan. Mr. Yas stated they were just windows on the previous plan.

Mr. Michael Scanlon of 4 J Street introduced himself. He stated his concerns for the Project to maintain building height codes from the ground to the top of any part of a facial roof. Additionally, Mr. Scanlons' primary concerns of the rear, West Side of the project were the safety issues surrounding the 4' set backs and no property being able to be "laddered" in the case of a fire.

## **CONTINUE PUBLIC HEARING.**

Mr. Viviano asked for additional Board comments. Mr. Lessard stated his concerns for removing the Selectman member and suggests further investigation of the issues because of the disservice to the Town not having its Representative sitting on the Board. There was considerable Board discussion regarding the base elevation heights in conjunction with the rear of the project being of higher elevation. Mr. Yas agreed to complete a grade-plane analysis of the height. Mr. Gillick **MOTIONED** to continue the Vertical Building & Development Company, LLC Site Plan Review Application to the July 21, 2004 Planning Board meeting subject to:

- 1) Review and comment from Department of Public Works, Fire Department, and Hampton Beach Commission Zoning & (re)Development Subcommittee,
- 2) Independent review and comment by Ambit Engineering,
- 3) Review and comment from the Town Attorney regarding leased land issue (if any),
- 4) Submittal of corrected, revised plans as discussed, and Submittal of grade plane analysis.

Mr. Lessard **SECONDED. VOTE: AIL. MOTION PASSES UNANIMOUSLY IN THE AFFIRMATIVE.**

## **V. CONSIDERATION OF MINUTES – MAY 5, 2004:**

Mr. Lessard **MOTIONED** to postpone the Consideration of Minutes of May 5, 2004 to the June 2, 2004 Planning Board meeting. Mr. Sakurai **SECONDED. VOTE: AIL. MOTION PASSES UNANIMOUSLY IN THE AFFIRMATIVE.**

## **VI. CORRESPONDENCE:**

Mrs. Kimball read her memo dated May 19, 2004 regarding the vesting of approved applications being of active and substantial development, and those projects being exempt from the School Impact Fees. Mr. Higgins **MOTIONED** to exempt the projects (listing on file at the Planning Office) from the imposition of Impact Fees for the four-year vesting period. The Boards' decision is based on R.J. Moreau Companies, Inc. v Town of Litchfield (2002). In this case, the court ruled that towns are barred from imposing impact fees on developments that have completed "active and substantial development ... within 12 months after the date of approval" (RSA 674:39), within the 4-year "vested" window. Mr. Gillick **SECONDED. VOTE: AIL. MOTION PASSES UNANIMOUSLY IN THE AFFIRMATIVE.**

Mr. Viviano read a memo from Mr. Barrington dated May 13, 2004 stating his recommendation to use an independent engineering inspection service for projects being reviewed by the Planning Board (as needed). Mr. Gillick **MOTIONED** to accept Mr. Barrington's recommendation to use an independent engineering inspection service for projects being reviewed by the Planning Board (as needed) and a response letter be drafted to Mr. Barrington to direct the Public Works Director to include in his correspondence to the Board his recommendations for said inspection(s) on the applications under his review, as needed. Mr. Workman **SECONDED. VOTE: All. MOTION PASSES UNANIMOUSLY IN THE AFFIRMATIVE.**

## **VII. OTHER BUSINESS:**

### **1. Conservation Commission meeting attendees:**

Mrs. Kimball stated the Boards' recommitment to the Conservation Commission has to be rescheduled for the next few months. There was Board discussion regarding availability of members. The following schedule was agreed by consensus and will be forwarded in a memo to Mrs. Ellen Goethel, Conservation Commission Chair:

June	2004 = Fran McMahon	926-2096
July	2004 = Ken Sakurai	926-7676
August	2004 = Tom Gillick	929-1093
September	2004 = Bill Bilodeau	926-7112
October	2004 = Keith Lessard	926-7421

Mr. Workman **MOTIONED** to adjourn. Mr. McMahon **SECONDED. VOTE: All. MOTION PASSES UNANIMOUSLY IN THE AFFIRMATIVE.**

Meeting adjourned at 11:05 p.m.

Respectfully Submitted,  
Janine L. Fortini  
Planning Board Secretary

*Minutes as amended June 2, 2004*